

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANTHONY ROMANO

Plaintiff,

v.

18-CV-302 (JLS) (MJR)

C.O. BROWN and  
SGT. BOWER,

Defendants.

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**DECISION AND ORDER**

Plaintiff Anthony Romano, a prisoner, commenced this action on March 1, 2018, alleging claims under 42 U.S.C. § 1983. Dkt. 1. He claims that, on April 19, 2017, he was subjected to excessive use of force in violation of his Eighth Amendment rights. *Id.* He filed an Amended Complaint on October 29, 2020, which is now the operative complaint. Dkt. 21.<sup>1</sup> The case has been referred to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 24.

On April 3, 2023, Defendant Brown moved to dismiss for lack of prosecution. Dkt. 65. Plaintiff thereafter filed various submissions, Dkt. 66, 68, 70, and Brown replied. Dkt. 67. On November 28, 2023, Judge Roemer issued a Report and Recommendation (“R&R”) recommending that Brown’s “motion be granted and that the amended complaint be dismissed, without prejudice, for failure to prosecute.” Dkt.

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<sup>1</sup> Pursuant to this Court’s March 25, 2021 Decision and Order, only C.O. Brown and Sgt. Bower remain as defendants. *See* Dkt. 23.

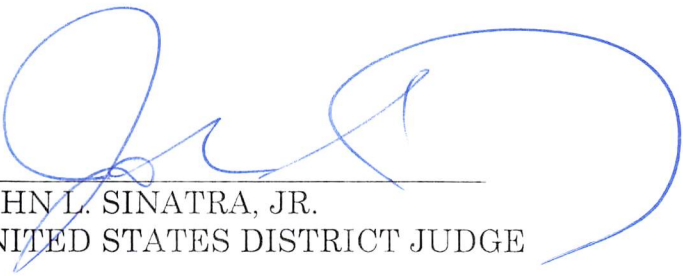
71. He further recommended that “dismissal for failure to prosecute should apply equally to plaintiff’s claims against Bower” such that “the entire amended complaint” is “dismissed without prejudice.” *Id.* at 14 n.8. On December 26, 2023, Plaintiff objected to the R&R. Dkt. 72. Brown opposed the objections, Dkt. 74, and Plaintiff replied. Dkt. 75.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Romer’s recommendation. For the reasons stated above and in the R&R, this Court GRANTS the [65] motion. The Amended Complaint is dismissed, without prejudice, for failure to prosecute. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: January 25, 2024  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE